

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Call Completion)	WC Docket No. 13-39
)	

**USTELECOM – THE BROADBAND ASSOCIATION
PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429 of the rules of the Federal Communications Commission (Commission),¹ USTelecom – the Broadband Association (USTelecom)² respectfully petitions the Commission reconsider limited aspects of its Rural Call Completion (2nd RCC Order).³ USTelecom continues to support efforts to ensure that rural call completion issues are fully, timely and efficiently resolved, and recently filed comments in the Commission’s ongoing rural call completion rulemaking proceeding (RCC Notice) that identified ways to further enhance the Commission’s existing framework.⁴

USTelecom supports the 2nd RCC Order’s requirement that each covered provider (“Covered Provider”)⁵ monitor the performance of the intermediate providers (“Intermediate

¹ 47 C.F.R. § 1.429.

² USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

³ Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rural Call Completion*, FCC 18-45 (April 17, 2018) (for citation purposes, USTelecom refers to the Second Report and Order as the “2nd RCC Order” and the third further notice of proposed rulemaking portion of the item as the “RCC Notice”).

⁴ See, Comments of USTelecom – the Broadband Association, WC Docket No. 13-39 (submitted June 4, 2018) (*USTelecom Comments*).

⁵ See, 2nd RCC Order, ¶ 6.

Providers”)⁶ with which it contracts and take steps to correct performance failures, and supports the Commission’s goal of resolving call completion problems to rural areas. However, the industry and consumers would be better served by reconsideration of the uncodified rules governing the monitoring obligations of non-safe-harbor providers.⁷ We discuss these areas below and respectfully request the Commission reconsider its 2nd RCC Order consistent with this petition.⁸

I. Petition for Reconsideration of Uncodified Rules Governing the Monitoring Obligations of Non-Safe Harbor Providers

The Commission’s 2nd RCC Order wisely established a framework under which Covered Providers could choose between either a safe harbor, or, in the alternative, a non-safe harbor approach for addressing rural call completion issues. There were many benefits to establishing a non-safe harbor category, including greater flexibility for all categories of providers, and avoidance of rigid ‘one size fits all’ regulatory requirements.

The benefits of the non-safe harbor category are, however, severely undermined by the uncodified rules set forth in paragraphs 34 and 35 of the 2nd RCC Order governing the monitoring obligations of non-safe-harbor Covered Providers.⁹ These uncodified rules require that Covered Providers either: a) monitor Intermediate Providers that they do not have direct contractual relationships or connections with – a technical impossibility, or b) to modify their vendor contracts to ensure that contractual restrictions, including restrictions relating to specific

⁶ *Id.*, ¶ 3.

⁷ *Id.*, Appendix B, § 64.211; *id.* paras. 34-35.

⁸ Concurrent with this Petition for Reconsideration, USTelecom has also filed a Petition for Stay in this proceeding. *See*, Petition for Stay, USTelecom – the Broadband Association, WC Docket No. 13-39 (filed June 11, 2018).

⁹ *See*, 2nd RCC Order, Appendix B, § 64.211; *id.* paras. 34-35.

performance requirements, flow down the entire call path.

Given that it is not technically possible for Covered Providers to monitor the performance of Intermediate Providers that they are not directly connected to, the only option that non-safe harbor providers have is to incorporate contractual restrictions into their vendor contracts. However, the contractual restrictions requirement is both impractical and, assuming the Commission adopts the same flexible, standards-based quality requirements for Intermediate Providers as it did for Covered Providers, unnecessary.

It should be emphasized that we do not suggest that Covered Providers should not be the “central party responsible for call completion issues.”¹⁰ As the Commission has previously held, Covered Providers appropriately bear ultimate responsibility for ensuring that their customers’ calls are completed, and USTelecom believes Covered Providers should continue to bear this responsibility, even as Congress and the Commission have broadened the scope of the RCC compliance framework to include Intermediate Providers. Rather, reconsideration as proposed herein is appropriate *because* Covered Providers will continue to bear this responsibility: it will ensure that the regulatory framework is appropriately tailored to address rural call completion issues without creating unnecessary confusion, costs, and compliance traps that are likely to do little to help.¹¹

A. Direct Monitoring of all Intermediate Providers is not Technically Feasible in a Non-Safe Harbor Environment.

Covered Providers can observe the performance of the Intermediate Providers with whom they have direct interconnections (Direct Intermediate Providers). That is because a Covered

¹⁰ *Id.*, ¶ 12.

¹¹ *Id.*, ¶ 13 (eliminating the previous rural call completion record-keeping requirements after concluding that they were “burdensome” and produced information “of limited utility.”).

Provider knows to whom it has handed a call, and it knows, for example, when those calls have completed successfully, or whether there are anomalies in the provider's performance. Covered Providers do not have such an ability to observe the performance of Intermediate Providers with whom they do not have direct interconnections (Further Intermediate Providers). Once the Covered Provider has handed the call to its Intermediate Provider, it has no technical capability to see how the call has been handled. Covered Providers are, therefore, only able to monitor the performance of direct Intermediate Providers. This is true regardless of whether the Covered Provider is a safe harbor or a non-safe harbor provider.

By way of example, assume Safe Harbor Covered Provider A has only one direct Intermediate Provider (Intermediate Provider B), and that Intermediate Provider B has two Further Intermediate Providers that it may use to complete calls to a given rural OCN, C and D. If Safe Harbor Covered Provider A observes unusual performance to a given OCN, it cannot determine, based on the information it receives, whether a failure is occurring at Direct Intermediate Provider B, Further Intermediate Provider C, or Further Intermediate Provider D. Safe Harbor Covered Provider A will receive the same signaling information from Direct Intermediate Provider B whether the unusual performance is due to, for example, a failure on the network of Direct Intermediate Provider B, Further Intermediate Provider C, Further Intermediate Provider D, or some combination of them. It is only after Safe Harbor Covered Provider A requires Direct Intermediate Provider B to conduct an investigation that Safe Harbor Covered Provider A will know where in the call chain the failure occurred, because only Direct Intermediate Provider B can observe the performance of Further Intermediate Providers C and D.

Given that it is not technically possible for Covered Providers to directly monitor the performance of Further Intermediate Providers, all Covered Providers, safe harbor and non-safe

harbor alike, will be forced, absent reconsideration, to modify their vendor contracts to ensure that contractual restrictions, including restrictions relating to specific performance requirements, flow down the entire call path.

B. The Requirement for Contractual Restrictions to Flow Down the Entire Call Path is Problematic.

In the Order, the Commission said that “Contractual measures that meet this standard include limiting the use of further Intermediate Providers and provisions that ensure quality call completion.”¹² USTelecom agrees that some carriers contract with their Direct Intermediate Providers to limit the use of further Intermediate Providers, and supports this as an option for providers. The Commission opted, for good reason, not to mandate such an approach.¹³ We further note that “ATIS does not believe such a mandate is necessary. ATIS believes that the proposed registration will be sufficient to mitigate any problems that may arise.”¹⁴

More problematic are the “provisions that ensure quality call completion,” such as the specific performance metrics identified by NASUCA that the Commission “encourages” Covered Providers to incorporate.¹⁵ As an initial matter, the record does not support the proposition that Covered Providers are able to propagate specific performance metrics down the entire call path.¹⁶ Indeed, the ATIS RCC Handbook speaks to performance requirements “defined in an agreement between the SP and the Intermediate Provider with which it contracts,”

¹² 2nd RCC Order, ¶ 34.

¹³ *Id.*, ¶ 21.

¹⁴ *See*, Comments of the Alliance for Telecommunications Industry Solutions, WC Docket No, 13-39, p. 5 (submitted June 4, 2018).

¹⁵ 2nd RCC Order, ¶ 34, n. 112.

¹⁶ *Id.*, n. 119, citing n. 112-114.

(i.e., a Direct Intermediate Provider) and actions that the Covered Provider should specify can be taken against that Direct Intermediate Provider.¹⁷

Requiring such modifications to a Covered Provider's contracts with its direct interconnected providers poses severe practical issues. For example, in order to implement such a mechanism, non-safe harbor providers would be required to make revisions to all of their related vendor agreements, despite the fact that revisions can generally be made only during the vendor contract renewal terms. This creates a scenario where Covered Providers would have numerous vendor agreements that lack the necessary contractual provisions. Even more problematic, for non-safe harbor providers, a *single* vendor agreement lacking the necessary contractual terms in any given call path would obviate the effectiveness of the Commission's rural call completion efforts. In other words, the Commission's framework for non-safe harbor providers establishes an 'all or nothing' approach, whereby such providers must operate in an environment that leaves no room for error.¹⁸

This in turn creates an unreasonable compliance trap for originating providers. Because many originating providers will be unable to modify their vendor agreements, or who have vendor agreements that do not flow down the appropriate protections, they face significant enforcement liability. In other words, a non-safe harbor Covered Provider would be subject to Commission enforcement action due to factors outside of its control (*i.e.*, a contractual inability to revise a vendor agreement).

¹⁷ See generally ATIS Document Center website, ATIS-0300106, *Intercarrier Call Completion/Call Termination Handbook*, p. 34, Section 6.1 (2015) (available at: <https://www.atis.org/docstore/product.aspx?id=26780>) (visited June 11, 2018).

¹⁸ In its *2nd RCC Order*, the Commission wisely chose to "not impose strict liability on covered providers for a call completion failure." See, *2nd RCC Order*, ¶ 42. Nevertheless, the notion that the existing framework creates a compliance trap should not be ignored.

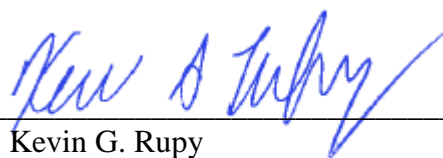
More importantly, the need for such an approach is eliminated if the Commission adopts USTelecom's proposal to adopt the same flexible, standard-based approach to call quality standards for Intermediate Providers that it did for Covered Providers.¹⁹ If all providers are held to the same standards for call quality, there is no need to create an unwieldy and unmanageable contractual compliance framework that is administratively inefficient, time consuming and unfair. In fact, such an approach would impede rather than advance the goal of resolving rural call completion issues, since it would force Covered Providers to unnecessarily commit resources to resolving an issue that the Commission may soon render moot through its pending decision in the RCC Notice.

II. Conclusion

For the foregoing reasons, the Commission should grant USTelecom's petition for reconsideration.

Respectfully submitted,

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¹⁹ See, *USTelecom Comments*, pp. 5 – 7.